Affirmed by P.C. (1955) July 12. M.L.T. 201

LIM JOO CHIANG
v.
LIM SIEW CHOO & ANOR.

[C. A. (Mathew, C.J. (F.M.), Brown and Knight, JJ.)
January 16, 1953]

[Singapore — Civil Appeal No. 21 of 1952]

Negligence — Loss of expectation of life — Damages — Measure — Civil Law Ordinance, ss. 7 and 8.

This was an appeal against the quantum of damages awarded in a case arising under sections 7 and 8 of the Civil Law Ordinance. The respondents claimed for damages for loss of expectation of life and for funeral expenses and cost of applying for letters of administration brought by them as administratrix and administrator respectively of the estate of one Chia Boon Poh alias Chia Boon Pah under the provisions of the above sections as amended by the Civil Law (Amendment) Ordinance, 1940.

The deceased was a trishaw driver aged 49, in a good state of health, and was earning between $8 to $10 a day and lived with his family. The widow received from the deceased a sum of $8 a day to run the home. There were 4 children of the marriage, but one was now earning and able to support himself. The widow sold coffee from the house in which the family lived, and earned about $100 a month, an earning which was unaffected by the death of the deceased.

On the 3rd of June 1951, the deceased was riding his trishaw along Geylang Road at or near the junction of Lorong 40 when he was run into and knocked down by the motor car driven by the appellant and killed. The appellant admitted negligence and the only question for decision was as to the question of quantum of damages.

The learned trial Judge awarded $2,000 under section 7 and $15,000 under section 8 of the Civil Law Ordinance.

Held on appeal, affirming the decision of the learned trial Judge: the awards made in the Court below were not so manifestly excessive that they required reduction. As no reasons were given as to how the sums awarded were calculated and specific points argued by counsel in the Court below were not made the subject of specific findings the proper way to deal with the appeal was to re-assess the amount awarded in the light of settled authority for the purpose of comparing the result with the awards made in the Court below. It was convenient in cases of this kind if the basis of calculating awards under section 8 of the Civil Law Ordinance were fully set out and the award to each dependant calculated separately.

Case referred to:—

(1) *Davies v. Powell Duffryn Collieries Ltd.* (1942) A.C. 601; (1942) 1 All E.R. 657.

Murray-Aynsley, C.J. in the Court below delivered the following judgment: "I award under section 7 of the Civil Law Ordinance $2,000. This includes funeral expenses and costs of letters of administration. Under section 8, I award $15,000. This is in addition to what may be received from the estate of deceased. Of this I apportion: $10,000 to widow, $1,200 to Chia Kwee Hock, $1,000 to Chia Geok Keow, $2,800 to Chia Kwee Kim. I do not award anything to Chia Kwee Cheng. Costs to plaintiffs."

CIVIL APPEAL.

L. A. J. Smith for the appellant.

D. H. Murphy for the respondents.

Cur. Adv. Vult.

Mathew, C.J.: — This is an appeal against the quantum of damages awarded in a case arising under sections 7 and 8 of the Civil Law Ordinance. In the judgment appealed from, a sum of $2,000 was awarded under section 7, which sum included $400 for funeral expenses and $350 for costs of letters of administration. Under section 8 $15,000 was awarded, and it was stated in the judgment that that sum was to be additional to anything that might be recovered from the deceased's estate. No reasons were given as to how these sums were calculated, and specific points argued by Counsel in the Court below were not made the subject of specific findings.

It is well established in the case of *Davies v. Powell Duffryn Collieries Ltd.*[1], that damages recoverable under section 7 of the Ordinance must be taken into account in assessing damages under section 8 in the case of dependents who will benefit from the damages under section 7. I take it that the intention was that the amount awarded for loss of expectation of life under section 7 was taken into account when the awards to the dependents under section 8 were calculated, and were accordingly reduced by the amount which the dependents would gain under section 7.

It is convenient in cases of this kind if the basis of calculating awards under section 8 is fully set out and the award to each dependent calculated separately.

The sums awarded for funeral expenses and letters of administration should be under the appropriate section, and the necessary set off made under sections 7 and 8. It is clearly in the interests of both parties to this appeal, bearing in mind the necessity to avoid the incurring of additional costs, that the question before us should be decided without further reference to the Court below.

I consider that the proper way to deal with this appeal is to re-assess the amount awarded in the light of settled authority for the purpose of comparing the result with the awards made in the Court below. If as a result of this detailed examination the amounts are manifestly excessive, the appeal must succeed.

The deceased who was a trishaw driver aged 49 was in a good state of health and had an expectation of life of 17 years. The widow received from the deceased a sum of $8 a day to run the home. There were 4 children of the marriage, but one of them is now earning and able to support himself. The living expenses of the widow were $50 a month and of the

3 children dependent on her about $30 a month each. The widow sold coffee from the house in which the family lived, and earned about $100 a month, an earning which is unaffected by the death of the deceased, and does not require consideration in calculating the sum to be awarded.

During the life-time of her husband the widow saved $800 out of her house-keeping money, and was given $600 by her brother-in-law after her husband's death. These sums require to be deducted from any sums calculated. The family was deprived, on the death of the deceased, of a sum of $140 a month, an amount necessary to maintain the widow and the 3 dependent children. It is reasonable to suppose that the deceased could have carried on his work as a trishaw driver for a further eleven years.

On the basis of $140 per month for 11 years, the cost of an annuity would be $13,860. The fact that he could no longer pursue the career of a trishaw driver for more than another eleven years did not necessarily mean an end to his earning capacity, and a further sum could reasonably be added, say $1,200. From this total of $15,060 must be deducted the sum of $800 savings from the house-keeping money and $600 given after the death of the deceased to the widow by her brother-in-law. The resulting figure is $13,660. To this must be added the sum of $400 for funeral expenses and $350 for costs of letters of administration, giving a total of $14,410. The total of the amounts awarded in the Court below to the deceased's dependents, deducting the sum of $288.33 which was awarded under section 8, is $16,711.67. The calculations I have made do not err on the side of generosity, and bearing this in mind I do not feel that the awards made in the Court below are so manifestly excessive that they require reduction.

I would dismiss the appeal with costs, and order the deposit to be paid out to the respondents against their costs.

Brown, J. and Knight, J. concurred.

Appeal dismissed.

HARDIAL SINGH v. REGINA.

[A. Cr. J. (Murray-Aynsley, C.J.) January 22, 1953]

[Singapore — Magistrate's Appeal No. 114 of 1952]

Merchandise Marks Ordinance (Cap. 157), s. 12 — Importing goods marked with counterfeit trade mark — Reasonable precautions not taken — Claim of innocence.

The appellant was charged under section 12 of the Merchandise Marks Ordinance with importing shirts with a counterfeit trade mark. Each shirt had three marks which were alleged to be counterfeit. Three separate charges were made in respect of the three different marks and the appellant was convicted on all three charges.

Held: (1) the appellant should have been convicted on only one charge as only one offence could be committed in respect of one article however many marks there may be on it; (2) the appellant knowingly imported the shirts and having this knowledge he did not take any reasonable precautions, could not claim that he had acted innocently. Where steps under section 12(a) of the Merchandise Marks Ordinance would have been of any avail then and then only could an importer rely on section 12(c).

Case referred to:—

(1) *Rex v. Ebata* (1938) M.L.J. 46 dissented from.

MAGISTRATE'S APPEAL.

K. A. Seth for the appellant.

Dr. C. H. Withers-Payne for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — This case arose out of the importation of shirts by the appellant. Each shirt had three marks which were alleged to be counterfeit. Three separate charges were made in respect of the three different marks and the appellant was convicted on all these charges. He should have been convicted on only one charge as, in my opinion, only one offence can be committed in respect of one article however many marks there may be on it.

There were technical objections to the first and third charges. Without considering the merits of these objections, I think that there is nothing to be said against the second charge. As to this charge, there is no doubt that the shirts bore a counterfeit mark "Dart", and that the appellant imported the shirts knowing that they had this mark on them. Having this knowledge he did not take any reasonable precautions which might have brought the case under exceptions (a) and (b). As ordinary precautions by way of enquiry would have shown that the marks were counterfeit, the appellant cannot therefore claim that he acted innocently.

This I take to be the effect of the English cases. Where steps under (a) would not have been of any avail then and then only can an importer rely on (c). On this point I think that the case of *R. v. Ebata*[1], was wrongly decided, but that does not affect the present case.

Order accordingly.